

# **MCP Regulatory Reform**

**Waste Site Cleanup Advisory Committee**

**March 22, 2012**



# Since our last advisory committee meeting...

- BWSC held meetings in February on
  - MCP Standards
  - Permit/Tier/NRS
  - AUL Streamlining
  - Vapor Intrusion
  - LNAPL
- Meeting minutes and comments posted to the MCP Reg Reform blog at <http://mcpregreform.wordpress.com/>



and

- “Commissioner’s Final Action Plan for Regulatory Reform at MassDEP” was released, March 5, 2012

[http://www.mass.gov/dep/about/priorities/regreform/final\\_action\\_plan\\_reg\\_reform.doc](http://www.mass.gov/dep/about/priorities/regreform/final_action_plan_reg_reform.doc)

- BWSC has two formal “Regulatory Reform” proposals
  - Simplify Activity and Use Limitations (#17)
  - Eliminate Tier I Permits/Streamline Tier Classification & NRS (#18)



# Other MCP Amendments to be Packaged with Regulatory Reform

- Vapor Intrusion
- LNAPL
- Standards Update
- Miscellaneous

**So where are we, where are we going,  
when will we get there?**



# Today's discussion, focus on

- AUL amendments
- Permits/Tier Classification/NRS amendments
- LNAPL and source control amendments
- MCP Closure amendments

# AULs Amendments

- Changes discussed are both regulatory and eDEP-related
- Focus on “Simplifying AULs” - reducing unnecessary, redundant elements of the AUL, making compliance easier, improving public accessibility to AUL information
- Amendments must maintain enforceability and effectiveness of AUL in communicating appropriate site activities/uses and obligations



# AULs Amendments

- Eliminate AUL Opinion
  - AUL Opinion is largely redundant with Form 1075; provide space on Form 1075 to narrate site-specific conditions and reason for the AUL (basis for AUL can be further narrated in RAO documentation)
  - Eliminating AUL Opinion eliminates need for BWSC 113A transmittal form
- Eliminate Exhibit A (legal description of parcel)
  - Is already part of the deed





# AUL Amendments

- Highlight current requirement to incorporate AUL into future deeds, easements, mortgages, leases and other instruments of transfer at the top of the AUL form
- Require documentation be sent to MassDEP when AUL is incorporated into a deed
- Revise Amendment form so that resulting inconsistent and consistent Site Activities and Uses are all provided in the Amendment



# AUL Transmittals Form/Web Info

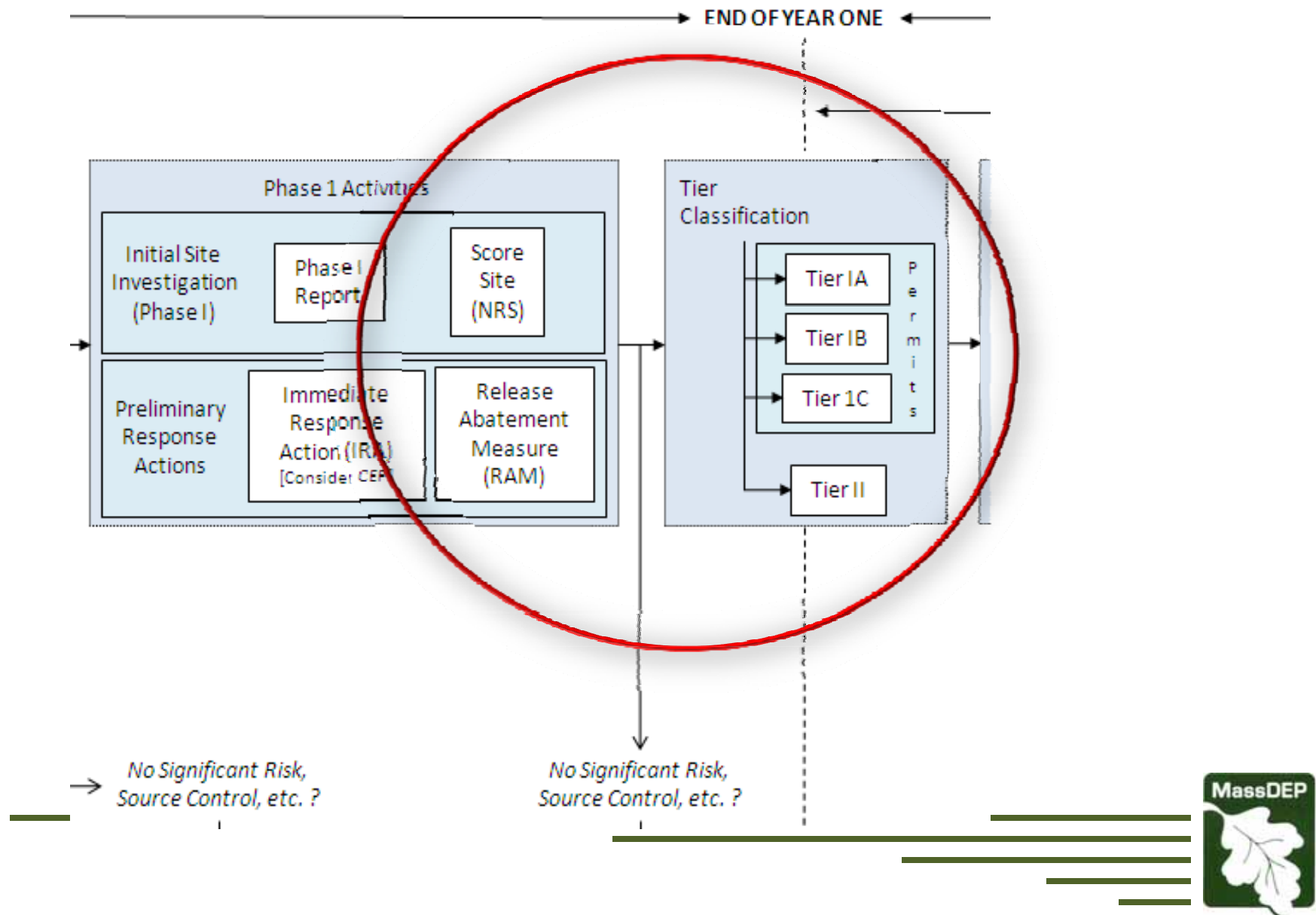
- Use transmittal form information to create web abstract of AUL information - improve public accessibility
- Create voluntary on-line form to update current owner contact information



# **Eliminate Permits/Streamline Tier Class/NRS**



# Revisions to NRS – Tier Classification – Permits



# STRAWMAN: NRS, Tier Classification & Permit Amendments Conceptual Approach (*see blog*)



# Numerical Ranking System Amendments

- Phase I still the basis for NRS level information
- NRS scoresheet replaced by streamlined “Tier Classification Criteria Form” (**TCCF**) focused on criteria that capture concerns that lead MassDEP to assign its staff to provide oversight
- TCCF could be included as part of subsequent submittals – updated as necessary, to reflect changes at site over time
- Subpart O could be eliminated; scoring requirements added to Subpart E



# TCCF Criteria Examples

- OHM above RCGW-1 in a Zone II or IWPA
- Presence of an Imminent Hazard
- Open IRA?
- CEP?
- Persistent chemicals?
- Out of compliance?
- Other?

# Tier Classification Amendments

- Retain a simplified Tier Classification Transmittal Form
- Retain a simplified Tier I/Tier II system as a communication tool
  - No Tier IA, IB, IC distinction
  - Keep Tier ID for default sites
- MassDEP computer system would assign Tier based on combination of factors from the TCCF; Tier could change over time as information is updated (e.g., after an IH is addressed)





# Permit Amendments

- No Tier I or Tier II permit; same process for both Tiers
- Provides procedures for transfer of parties conducting work
- Uniform extension timeframe of 2 years unless MassDEP specifies otherwise
- Retains provisions to restart clock for Eligible Persons/Tenants (currently 40.0570)
- Special Project Permits become Special Project Designations
- Subpart G is eliminated
- Possible addition of permits for active exposure mitigation systems (*to be discussed as part of MCP Closure Amendments*)

## Other Concepts

- Subpart F (Transition Provisions) is eliminated
- Incorporate CSM requirement into Phases I & II
- Consider changing deadline for Phase II/III completion to 3 years from Tier Classification
- Require estimate of timeframe for achieving a Permanent Solution for each remedy evaluated in Phase III to establish a baseline for measuring progress

# Fees

- No permits = No permit fees
- Options for Amending Annual Compliance Fees (ACFs cover MassDEP oversight/audits)
  - Phase based fees
  - Submittal based fees
  - Tier based fees
  - Fees on sites with ongoing obligations

# Light Non-Aqueous Phase Liquids (LNAPL)



## 310 CMR 40.0996:

“The presence of non-aqueous phase liquids (NAPL) having a thickness equal to or greater than ½ inch in any environmental medium is considered to be a level which exceeds Upper Concentration Limits (UCLs)” and hence which prohibits the attainment of a Permanent Solution.



## 310 CMR 40.0006:

This thickness is “as a continuous separate phase as measured in a groundwater monitoring well or otherwise observed in the environment.”



# Multi-Phase Fluid Flow in Porous Media

Fundamental

More accurate

Not necessarily simple



# Guiding Principles

- Keep it simple
- Focus on MCP and PS
- Clear, established, peer-reviewed, published works

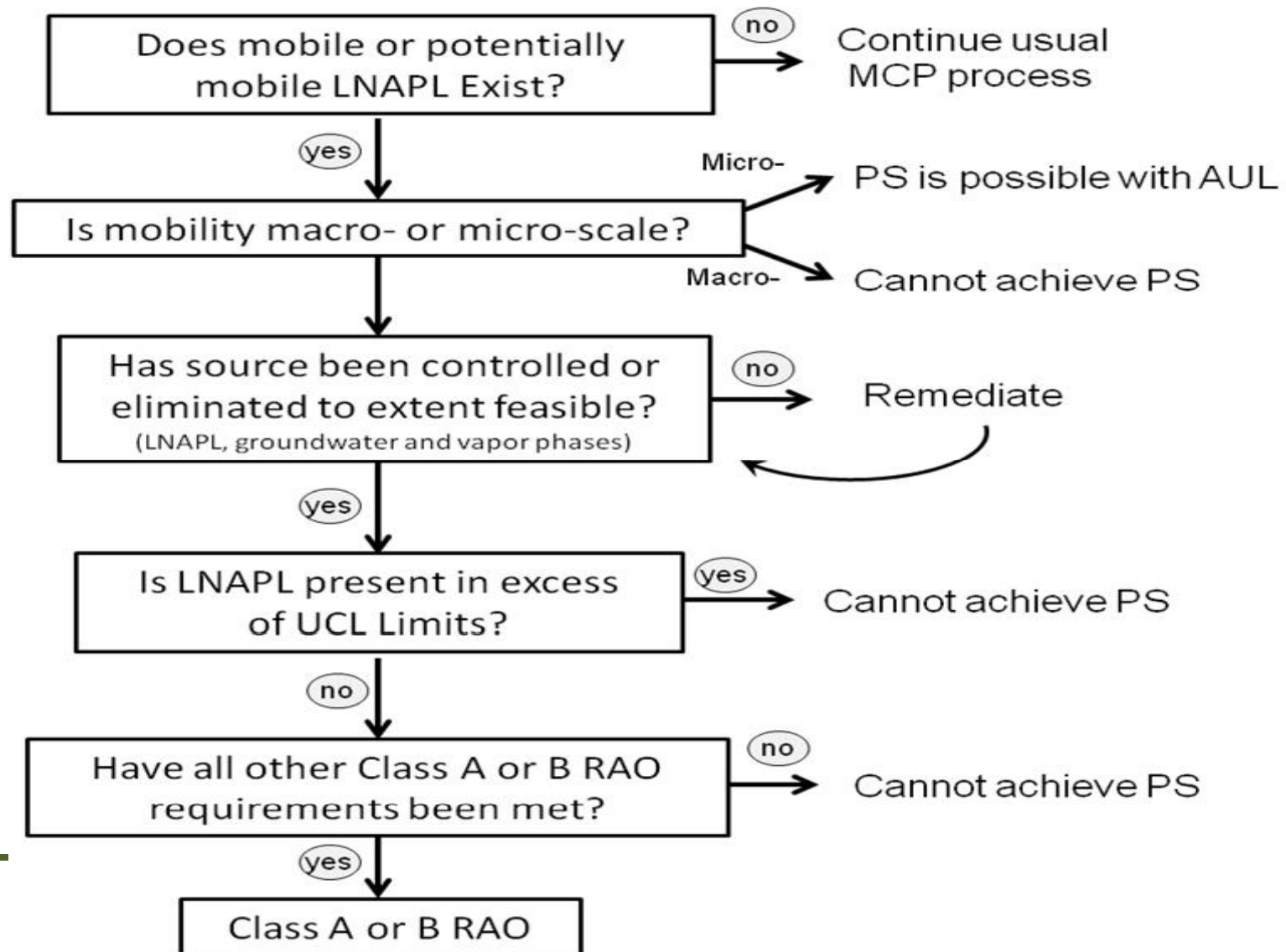




# Evaluating Permanent Solutions at LNAPL Contaminated Sites

Following the Massachusetts Contingency Plan 310 CMR 40.0000

Draft for intra-agency policy deliberation only. Do not cite or quote.



# MCP Changes Being Considered

- Eliminate ½ inch UCL
- Correct NAPL definition (eliminate “continuous”)
- Revised Source Control Provisions
  - Addressing range of source issues, including NAPL and limiting exposure potential (e.g., vapor intrusion)
  - Considering distinguishing between original source concerns and residual source concerns



# TRAINING OPPORTUNITY

ITRC LNAPL Training (April 5 & 6):  
Park Plaza Hotel, Boston  
LSP Continuing Education Credit (16 hours)



# **LNAPL**

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# MCP Closure Provisions - framework/incorporating vapor intrusion concerns

This is where the early questions REALLY apply...

*So where are we, where are we  
going, how did we get here?*



## 2 Issues from VI Discussions

1. How to address the “*There, but for the absence of an occupied building or structure, is a VI problem...*” problem.

(vacant lot, high groundwater levels, not GW-2)

2. How to address the “*It’s Permanent as long as you don’t turn on the fan*” SSDS problem.

(“Active” systems can’t be a Permanent Solution”)



# The Obvious Solutions...

## Create a New RAO Category!

- Let “RAO VI” warn owners/buyers of vacant lots about potential vapor issues if developed...

## Create a New Permit for Active SSDSs!

- Let permit conditions “ensure” a level of No Significant Risk...



## ... Lead to Obvious Outcomes

Problem 1 & Problem 2 aren't the same...

*RAO VI-1 & RAO VI-2!*

What if there's some other cap?

*RAO VI-3 !*

What about Engineered Barriers?

*RAO VI-4 ! Etc., etc., etc...*

And what about the next Issue du Jour?





# Which Begs the Question...

THIS is Reg Reform?



# Strawman RAO-VI Proposal

THERE IS NO RAO-VI PROPOSAL

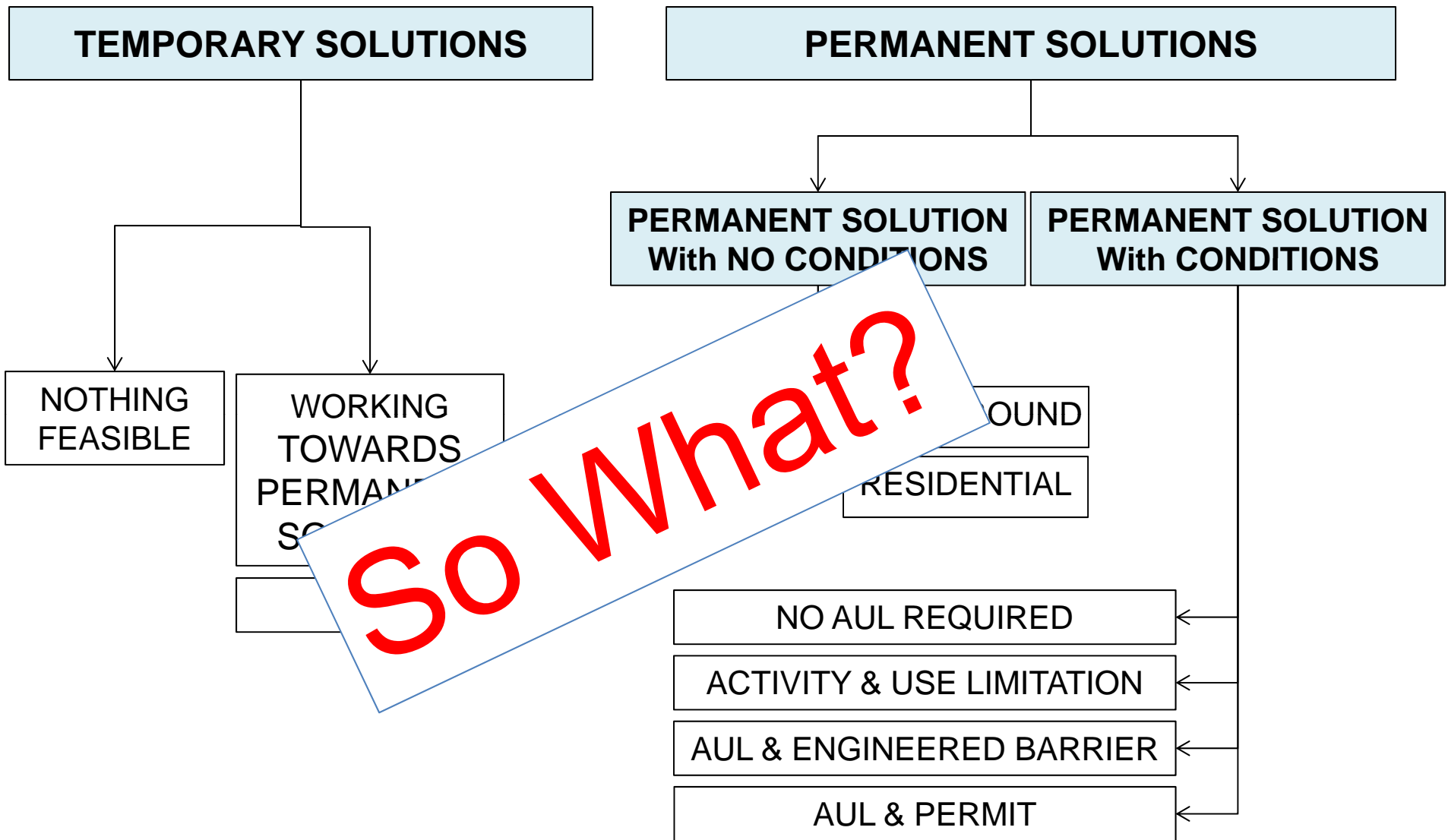
# Back to Basics

All Response Action Outcomes are not the same...  
the classifications are informative,  
*if you speak the language.*

A-1, A-2, A-3, A-4, B-1, B-2, B-3, C-1, C-2, VI-1...

# Back to Basics

- Class C RAOs are misinterpreted as “You’re done”
  - *Call them what they are.*
- Class A & B RAOs are essentially the same thing
  - *Simplify & group them together.*
- There’s only ONE important question to ask about the closed site
  - *Are there ongoing obligations or conditions?*



# What do you say if you are told...

“The property for sale has a  
Class A-3 Response Action Outcome.”

“The property for sale has a  
Permanent Solution with Conditions?”



## 2 New BIG Concepts

- Permanent Solution could be had with a Permitted ACTIVE Exposure Pathway Elimination Measure  
(while not necessarily specific to Vapor Intrusion... active SSDS is an example)
- Not ALL conditions have to be put into an AUL  
(while not necessarily specific to Vapor Intrusion... the future building/future potential VI is an example)



	No Permit Required	Permit Required
No AUL Required	<b>Permanent Solution – No Conditions:</b> <ul style="list-style-type: none"> <li>- Background, or</li> <li>- NSR for residential use with no mitigation system needed</li> </ul> <b>Permanent Solutions with Conditions</b> <ul style="list-style-type: none"> <li>- future building/potential VI, or</li> <li>- QUESTION: <i>other conditions?</i></li> </ul>	** NA **
AUL Required	<b>Permanent Solutions with Conditions</b> <ul style="list-style-type: none"> <li>• NSR depends on land use restriction; and/or</li> <li>• Passive Exposure Pathway Elimination Measure is needed</li> </ul>	<b>Permanent Solutions with Conditions</b> Active Exposure Pathway Elimination Measure is needed



# What About the Permits?

WE WANT/NEED INPUT ON THE DETAILS  
OUR THOUGHTS...

- Permit for operating the system.
- Compliance subject to audit
- Noncompliance invalidates Permanent Solution
- Permit can be renewed & transferred
- Failure to renew invalidates the Permanent Solution
- Permit conditions...FAM, remote sensing, battery-power back-up
- Fees would be applicable.



The “Not an RAO-VI Proposal” would provide increased flexibility and accountability based on nearly 20 years of implementing the “new” MCP.

Along the way it simplifies, streamlines and clarifies requirements for the protection of public health & the environment.

Protection  
Process

THIS is Reg Reform.

